

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 720 of 2020

1. Dhannu Lal Sarva S/o Ameer Singh Sarva, Aged About 45 Years R/o. Village Kharthuli, Police Station Balod, District Balod Chhattisgarh. At Present R/o Village Kundarupara, Balod, District Balod Chhattisgarh.
2. Ishank Sarva S/o Dhanu Lal Sarva, Aged About 19 Years R/o. Village Kharthuli, Police Station Balod, District Balod Chhattisgarh. At Present R/o Village Kundarupara, Balod, District Balod Chhattisgarh.

---- Applicants

Versus

State Of Chhattisgarh Through The Station House Officer, Police Chowki Baloda, Police Station Saraipali, District Mahasamund, Chhattisgarh.

---- Respondent

For Applicant	: Shri T.K. Jha, Advocate.
For Respondent/State	: Shri D.P. Singh, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

05-02-2021

Heard.

1. This criminal revision petition has been brought being aggrieved by the order dated 3.11.2020 passed by the Learned Special Judge, (N.D.P.S. Act), Saraipali, District Mahasamund, Chhattisgarh, dismissing the application filed by the applicants for grant of interim custody of the motorcycle under seizure bearing registration No. CG 24 F 4420, which has been seized by the police station Saraipali in connection of crime under Section 20(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 in Crime No.302 of 2020.
2. The case of the prosecution is that when the applicants were traveling on motorcycle bearing registration No.CG 24 F 4420, they were stopped

and arrested by the police for transportation of ganja. The motorcycle has been seized in the same case.

3. Learned counsel for the applicants submits that the impugned order is erroneous and the refusal for interim custody has been ordered only on the basis that the seized property is liable for confiscation. The proceeding of confiscation is initiated only after the completion of trial according to the provision under Section 63 of the Narcotic Drugs and Psychotropic Substances Act, therefore, during the pendency of trial applicant No.1, who is the registered owner of the vehicle was entitled for grant of interim custody, however, applicant No.1 – Dhannu Lal Sarva is a disabled person and he has a personal need of that vehicle for his movement. Therefore, it is prayed that the impugned order be set aside and the relief be granted by allowing the revision petition.
4. Learned counsel appearing for the respondent/ State opposes the submissions so made and submits that the applicants are the accused in the same case for transportation of ganja. Learned Court below has not committed any error in passing the rejection order. Hence, the revision petition be dismissed.
5. Heard both counsel for the parties and perused the material available on record.
6. Considered the submissions and perused the order passed by the Court below. Being a registered owner, applicant No.1 has the *prima facie* entitlement, although, he is an accused in this case, but the confiscation of the seized property is subject to conclusion of trial which is yet pending. As applicant No.1 is a disabled person and he has expressed about his need about vehicle under seizure, the proceeding of confiscation can be started under Section 63 of the NDPS Act only after the conclusion of trial, therefore, applicant No.1 could have been

granted interim custody of the vehicle until the trial is concluded. Hence, I am of this view that the learned Special Court has not taken the correct view and passed the erroneous order.

7. Accordingly, the revision petition is allowed. The impugned order dated 3.11.2020, passed by the Learned Special Judge under NDPS Act, Saraipali, District Mahasamund is set aside and it is directed that the motorcycle bearing registration No. CG 24 F 4420 be released in favour of applicant No.1 – Dhannu Lal Sarva by way of interim measure till the disposal of the trial. The learned trial Court is directed to make an assessment of seized vehicle and pass an order accordingly for furnishing bonds and supurdnama. On furnishing such bonds and supurdnama, the vehicle in question be released in favour of the applicant with a condition that the applicant shall not transfer or change description/ features of the vehicle in question and he shall produce the said vehicle before the trial Court or confiscation authority when any such order is passed during the course of trial or confiscation proceeding.

Sd/-
(Rajendra Chandra Singh Samant)
Judge